

323 CMR: DIVISION OF LAW ENFORCEMENT

323 CMR 6.00: ~~COMMERCIAL~~~~ommercial~~ WHITEWATER ~~USE~~~~use &~~ ~~RAFTING~~

Section

- 6.01: Purpose
- 6.02: Definitions
- 6.03: Safety Certificate
- 6.04: Permits
- 6.05: Whitewater Advisory Commission
- 6.06: Prohibitions
- 6.07: Penalties

6.01: Purpose

323 CMR 6.00 is intended to promote the protection of public safety and welfare by establishing rules of conduct and operation governing commercial whitewater use, ~~whitewater rafting~~, by promoting voluntary compliance with the rules, and, when necessary, by deterring through penalties noncompliance with the rules. 323 CMR 6.00 governs the use of commercial whitewater crafts ~~rafts~~ on the Deerfield River in Massachusetts. Specifically, there exists portions of the Deerfield River known as the Fife Brook and Monroe sections beginning at the Vermont border and extending to the first bridge south of Zoar gap just north of Route 2. These sections have seen an increased interest by commercial entities in whitewater ~~rafting-use~~ because of its excellent whitewater potential. In addition, these sections of the Deerfield presently contain the most popular, pristine, and beautiful angling spot in western Massachusetts, with two catch and release areas, and are among the most popular angling areas in the northeast. Use by anglers, coupled with increased commercial whitewater use ~~rafting~~, creates conflicts and safety concerns.

Numerous states regulate the operation of whitewater ~~rafting-use~~ including a limitation on the number of companies and rafts that may utilize a particular river. Such states include Maine, New York, Pennsylvania, Virginia, West Virginia, North Carolina and many of the western states. It is well known that such regulatory efforts are based in part on safety factors.

Based upon these facts the Director has determined that 323 CMR 6.00 regulating whitewater commercial use, ~~rafting~~ on the Deerfield River is in the interest of public safety.

6.02: Definitions

Commercial ~~W~~whitewater ~~O~~utfitter. ~~-means a~~ person, corporation, business, company or other legal entity that provides Wwhitewater Craft or conducts Wwhitewater Craft excursions for compensation.

Director. ~~-means t~~The Director of the ~~Office~~Division of Law Enforcement. ~~100 Nashua Street, Boston, MA.~~

Passenger. ~~-means a~~Any person other than an employee of the outfitter making the trip in a whitewater craft. Passengers making more than one acyclic excursion in the same day shall be considered another passenger for purposes of the quota allocated to the outfitter.

Whitewater Craft. ~~-means a~~Any ~~inflatable~~ craft used to transport passengers along the Deerfield River, ~~-including but not limited to inflatable rafts and tubes and or any non-inflatable craft such as including but not limited to;~~ k ~~K~~kayaks ~~or~~ and stand up paddle boards, ~~used to transport passengers along the Deerfield River.~~

6.03: Safety Certificate

(1) Requirements. All Wwhitewater Craft operated by a Commercial Wwhitewater Outfitter are required to possess a safety certificate issued by the Director, which shall be applied for at the same time as the permit required by 323 CMR 6.03(4) is applied for, on forms supplied by the Director. Safety certificates ~~may shall~~ be issued to Commercial Whitewater Outfitters for each Whitewater Craft owned or operated by that Commercial Whitewater Outfitter and shall be conditioned according to the criteria found in 323 CMR 6.03(2) through (7).

(2) Guide. Each Wwhitewater Craft shall be accompanied by a guide who shall be trained and experienced in the safe operation of such Wwhitewater Craft. The guide shall satisfactorily have completed courses in bBasic fFirst aAid and bBasic cCardio-pPulmonary rResuscitation and provide documentation of completion if requested. The guide shall be present at all

times during operation ~~in of~~ the ~~W~~whitewater ~~C~~raft along with the passengers. Guides shall wear a personal flotation device ~~and helmet~~ distinctive in color than that of the passengers.

(3) Equipment. Each ~~W~~whitewater ~~C~~raft ~~excluding stand up paddleboards~~ shall contain ~~one~~a throw bag. There shall be one first aid kit for every five ~~W~~whitewater ~~C~~rafts on the river. The ~~W~~whitewater ~~C~~raft, throw bag and first aid kit shall each be of a kind and type approved by the Director. ~~Commercial Wwhitewater Crafts may not exceed carry more than 8 passengers.~~

(4) Passengers. Each passenger in a ~~commercial~~-~~W~~whitewater ~~C~~raft ~~owned or operated by a Commercial Whitewater Outfitter~~ shall wear a safety helmet and a personal flotation device of ~~appropriate size a kind~~ and type approved by the Director. ~~_____~~

~~(5) Age restriction. All persons 15 years of age or under must be accompanied by and directly supervised by an adult of at least eighteen (18) years of age other than the guide during any trip on any Whitewater Craft, by a parent, guardian or adult at least 18 years of age.~~

~~(65)~~ Instruction. Commercial ~~W~~whitewater ~~O~~utfitters shall provide instruction to each passenger in the operation of ~~W~~whitewater ~~C~~raft and shall advise each passenger of appropriate safety procedures and attendant hazards prior to any excursion.

~~(76)~~ Conditions. The Director may further condition a safety certificate in the interest of public safety.

~~(87)~~ Limit. The Director may limit the number of safety certificates to that number which is necessary to carry the daily passenger quota.

~~(98)~~ Numbering. Each ~~W~~whitewater ~~C~~raft shall be numbered in a manner approved by the Director.

6.04: Permits

(1) Requirement. Any ~~person, corporation, partnership or other business entity~~ ~~Commercial Whitewater Outfitter~~ intending to conduct excursions on the Deerfield River is required to have a permit issued by the Director.

(2) Eligibility. Unless otherwise provided in 323 CMR 6.04(1~~12~~), only ~~C~~ommercial ~~W~~whitewater ~~O~~utfitters who have held a permit from the ~~Division Office~~ of Law Enforcement to conduct excursions on the Deerfield River in any previous year are eligible to apply for such a permit.

(3) Application. Applications for a permit shall be on forms supplied by the Director. The application shall be submitted on or before January 1 of each year. The Director shall approve or deny any application on or before ~~February~~ ~~March 15~~ of each year.

(4) Public Comment. Prior to the approval or denial of any permit application, the Director may, in his discretion, hold a public meeting in a city or town in Berkshire ~~County~~ ~~or Franklin County~~. Notice of the meeting shall be published in a local newspaper of general circulation. At the meeting, the Director shall receive testimony and comment on pending permit applications.

(5) Evaluation. The Director shall evaluate a ~~C~~ommercial ~~W~~whitewater ~~O~~utfitter's permit application on the basis of the following criteria:

- (a) length and breadth of experience in the commercial operation of ~~W~~whitewater ~~C~~raft;
- (b) experience on the Deerfield River;
- (c) number and type of violations, citations or enforcement warnings issued, if any;
- (d) safety record;
- (e) level of safety, rescue and competency training achieved by each guide;
- (f) quality and condition of equipment, including but not limited to rafts, safety helmets, personal flotation devices, throw bags, first aid kits, paddles and wetsuits;
- (g) adequacy of insurance; and
- (h) testimony presented at the public meeting, if any, and any written comments received.

(6) Quotas. The Director shall condition the permit by allocating daily passenger ~~and or raft~~ quotas from a total daily quota of ~~320~~ ~~432~~ passengers. ~~The Director may also allocate the daily number of Whitewater Crafts that may be operated per Commercial Whitewater Outfitter, and may~~

323 CMR: DIVISION OF LAW ENFORCEMENT

also allocate the number of Whitewater Crafts that may be operated at any one time. This quota shall be based on a Ceommercial ~~W~~Whitewater Outfitter's qualifications, experience, financial security, safety record and insurance status as well as public safety on the Deerfield River. Each daily quota shall be effective from ~~9:30 A.M.~~09:00 A.M. to ~~sunset~~4:30 P.M. per day as published annually in the Massachusetts Division of Fisheries and Wildlife "Massachusetts Guide to Hunting, Freshwater Fishing, and Trapping Laws" sourced from the U.S. Naval Observatory Astronomical Applications Department, Washington, D.C. Unused portions of daily quotas are not cumulative and may not be carried over.

(7) Signature. An applicant shall sign the permit when issued and such signature shall constitute a statement that the permit holder has read 323 CMR 6.00, the provisions of M.G.L. c. 90B and any conditions and restrictions of the permit and agrees to fully comply therewith.

(8) Validity. Permits shall remain in full force and effect for the period of time set forth in the permit unless otherwise suspended or revoked pursuant to 323 CMR 6.07.

(9) Transfer. Permits are not the property of the holder. Permits may not be transferred, sold, bartered or exchanged for cash or property, except that a Ceommercial ~~W~~Whitewater Outfitter that is purchased by another person or business may, subject to the approval of the Director, transfer its permit to the new owner if, in the opinion of the Director the transfer is in the public interest and otherwise consistent with public safety on the Deerfield River. The Director's decision shall be governed by the provisions of 323 CMR 6.04(5).

(10) Bankruptcy or Death. Unless otherwise provided, the executor, in the case of a permit holder's death, or the trustee, in the event of a permit holder's bankruptcy, may, with the approval of the Director, continue to conduct excursions on the Deerfield River pursuant to the permit. The Director's decision shall be governed by the provisions of 323 CMR 6.04(5).

(11) List. The Director shall maintain a list of Ceommercial ~~W~~Whitewater Outfitters who are not eligible to apply for a permit pursuant to do not comply with 323 CMR 6.04(2) but have~~ed~~ otherwise expressed written interest in applying for a permit as evidenced by the records of the ~~Division-Office~~ of Law Enforcement. Notwithstanding 323 CMR 6.04(2), permits that become available as a result of application or transfer denials, bankruptcy, or death of a permit holder, revocations or any future increase in passenger quotas may be issued by the Director to those Ceommercial ~~W~~Whitewater Outfitters on said list. The Director's decision shall be governed by the provisions of 323 CMR 6.04(5). The establishment of the list shall be subject to public comment and publication in the *Massachusetts Register*.

6.05: Whitewater Advisory Committee

(1) The Director shall appoint a Whitewater Advisory Committee. The Whitewater Advisory Committee shall consist of one member from the ~~Appalachian Mountain~~Appalachian Mountain Club, one member from Trout Unlimited, one member from the Deerfield River Compact, one member from the Deerfield River Watershed Association, one member from an area chamber of commerce, one representative from the ~~Division-Office~~ of Law Enforcement, one representative from the Division of Fisheries & Wildlife, and as an *ex-officio* member one from each of those Ceommercial ~~W~~Whitewater Outfitters that hold a permit issued in accordance with 323 CMR 6.04;

(2) The Committee shall advise the Director on the administration of 323 CMR 6.00 except that *ex-officio* members from each Ceommercial ~~W~~Whitewater Outfitter that holds a permit issued pursuant to 323 CMR 6.04 may not comment or advise the Director on the permit application of any other Ceommercial ~~W~~Whitewater Outfitter.

6.06: Prohibitions

It is a violation for:

(1) a Ceommercial ~~W~~Whitewater Outfitter to operate on the Deerfield River without a permit from the Director;

(2) ~~any~~ WWhitewater Craft operated by a Ceommercial ~~W~~Whitewater Outfitter to operate on the Deerfield River without a safety certificate by the Director;

(3) a Ceommercial ~~W~~Whitewater Outfitter to violate any term or condition of the permit or safety certificate;

(4) a Ceommercial ~~W~~Whitewater Outfitter to operate on the Deerfield River without adequate

323 CMR: DIVISION OF LAW ENFORCEMENT
liability insurance, provided such insurance is commercially available;

- (5) a Commercial Whitewater Outfitter to exceed its established daily passenger quota on the Deerfield River;
- (6) a Commercial Whitewater Outfitter to rent or lease single-person rafts, otherwise known as "rubber duckies", or ~~inner~~-tubes for use on the Deerfield River;
- (7) a Commercial Whitewater Craft excursion to occur on the Deerfield River ~~before~~during ~~any date other than~~ the first Saturday in April April 15 through or after the last Sunday in October ~~15~~, inclusive;
- (8) a Commercial Whitewater Craft excursion to occur on the Deerfield River ~~before~~during ~~any time other than~~ 9:00 9:30–A.M. to or after sunset4:30–P.M as published annually in the Massachusetts Division of Fisheries and Wildlife “Massachusetts Guide to Hunting, Freshwater Fishing, and Trapping Laws” sourced from the U.S. Naval Observatory Astronomical Application Department, Washington, D.C.;
- (9) the consumption~~or possession~~ of drugs or alcohol to occur during an excursion;
- (10) any glass bottles or containers to be on board a Whitewater Craft operated by a Commercial ~~w~~Whitewater ~~e~~Outfitter during an excursion;
- (11) a Commercial Whitewater Outfitter to loan, sell, assign or transfer any portion of ~~his-its~~ allocated daily passenger quota ~~for~~to the use of another.

6.07: Penalties

- (1) For purposes of M.G.L. c. 90B, §14, a violation of 323 CMR 6.00 shall be deemed a violation of M.G.L. c. 90B, §12A~~... c. §~~.
- (2) Any violation of 323 CMR 6.00 by a Commercial Whitewater Outfitter ~~shall~~may result in the suspension or revocation of the permit issued pursuant to 323 CMR 6.04(1) and ~~the-any~~ safety certificates issued pursuant to 323 CMR 6.03 for Whitewater Craft owned or operated by that Commercial Whitewater Outfitter. Suspensions and revocations are subject to the provisions governing adjudicatory proceedings pursuant to the relevant provisions of M.G.L. c. 30A.

REGULATORY AUTHORITY

323 CMR 6.00: M.G.L. c. 90B, § 11.